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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1925.

MISSOURI PACIFIC RAILROAD COMPANY, Petitioner,

vs.

BYRD J. BOONE, Respondent.

No. 203.

On Writ of Certiorari to the St. Louis Court of Appeals of the State of Missouri.

BRIEF OF PETITIONER.

EDWARD J. WHITE,
JAMES F. GREEN,
MERRITT U. HAYDEN,
Attorneys for Petitioner.

St. Louis Law Printing Co., 415 North Eighth Street, Central 4477.

INDEX.

	Page
Acts of Congress relied upon to sustain jurisdiction of this Court	7
Appendix	53
Argument	22
Assignment of errors	20
Baggage Tariff No. 25-2 involved in this case	16
Boone v. Missouri Pacific Railroad Co., 263 Southwestern Reporter 495 (Style of case in Court of Appeals)	2
Cases decided by this Court and relied upon to sustain jurisdiction of this Court (See list of cases at end of this index)	8
Claims advanced and rulings made in the lower court	2
Conversion theory ineffectual to escape effect and validity of tariff provision for limitation of liability for loss of baggage	33
Date of judgment to be reviewed	2
Decision of St. Louis Court of Appeals	2
Discrimination against interstate commerce will not be permitted	39
Federal Control Act	54
Finality of judgment sought to be reviewed	9
Grounds on which jurisdiction of this Court is invoked	1
Interstate Commerce Act	53
Report of opinion of court below	2
Rulings of lower court	2
Statement of case	10

Summary of argument and authorities relied on. 22
I. The tariff provision for limitation of liability for loss of respondent's trunk was valid and binding upon both petitioner and respondent 22
II. The tariff provision cannot be evaded by holding that there was a conversion of respondent's trunk by petitioner..... 33
III. The effect of the decision of the Court of Appeals is to allow a discrimination against interstate commerce 39

Transportation Act 1920 (Section 208a)..... 54
Trial of case 15
Validity of tariff provision limiting liability for loss of baggage 22

Cases Cited.

American Express Co. v. Croninger, 226 U. S. 491 24
American Railway Express Co. v. Daniel, 46 Sup. Ct. Reporter 15..... 31
American Railway Express Co. v. Levee, 263 U. S. 19 .....19, 21, 24, 27, 34
American Railway Express Co. v. Lindenberg, 260 U. S. 584.....24, 26
Atchison, Topeka & Santa Fe Ry. Co. v. International Land & Investment Co., 247 Federal Reporter 265 37
Boston & Maine R. R. Co. v. Hooker, 233 U. S. 97 24
Cincinnati N. O. & T. Ry. Co. v. Ranken, 241 U. S. 319..... 24
Georgia F. & A. Ry. Co. v. Blish Milling Co., 241 U. S. 190 35
Hines v. Burnett, 107 S. E. 657.....24, 26, 29

Houston & Texas Railway Co. v. United States, 234 U. S. 342.....21, 26, 39
Illinois Cent. R. R. v. Public Utilities Com., 245 U. S. 493.....21, 27, 40, 49
Kansas City Southern Ry. Co. v. Carl, 227 U. S. 652 24
King v. Barbain, 249 Fed. et al. Reporter 303.... 37
Lancaster et al. v. McCarty et al., 267 U. S. 427 .....26, 40
Louisville & Nashville Ry. Co. v. Maxwell, 237 U. S. 94..... 24
Marshall etc. Grain Co. v. Railway Co., 176 Mo. 480 37
Michigan Central Railroad Co. v. Michigan Public Utilities Commission, 271 Federal Reporter 319 28
Mobile & Ohio Railroad Co. v. Sawmill Co., 251 Southwestern Rep. 434 24
Nanson v. Jacob, 93 Mo. 331..... 37
New York, State of, v. United States, 257 U. S. 591 .....21, 27, 40, 50
Northern Pacific Ry. Co. v. North Dakota, 250 U. S. 135.....25, 26
Powell v. Hines, 104 S. E. 533.....24, 26, 29
Southern Express Co. v. Beyers, 240 U. S. 612..31, 32
State of New York v. United States, 257 U. S. 591 ..... 21, 27, 40, 50
Western Union Telegraph Co. v. Esteve Bros. Co., 256 U. S. 566.....39, 46
Wisconsin R. R. Com. v. C. B. & Q. R. R., 257 U. S. 563.....27, 40, 47

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BRIEF OF PETITIONER.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOLVED.

This case is here on writ of certiorari granted by this Court on January 5th, 1925, to review the judgment of the St. Louis Court of Appeals of Missouri affirming a judgment of the Circuit Court, City of St. Louis, Missouri, in favor of respondent and against petitioner, for the full value of a trunk and contents belonging to respondent, which was checked by her for transportation and which

was transported by petitioner from Jefferson City, Missouri, to Sedalia, Missouri, but which was not delivered to respondent at the latter place (R. a).

REFERENCE TO REPORT OF OPINION OF COURT BELOW.

The opinion of the St. Louis Court of Appeals was not officially published. It will, however, be found in Volume 263, Southwestern Reporter, at page 495.

DATE OF JUDGMENT TO BE REVIEWED.

The judgment of the St. Louis Court of Appeals was rendered on June 6th, 1924 (R. 89).

The opinion of that Court will be found in the record, beginning at page 86 and ending at page 89. As ordered by the court below, the opinion was not officially published (R. 101).

A motion for rehearing was duly filed in said Court of Appeals, which motion was overruled on July 11th, 1924 (R. 100). Thereafter, on July 23rd, 1924, an application for writ of certiorari was filed in the Supreme Court of Missouri (R. 102-105), which application was denied by the latter court (R. 111).

CLAIMS ADVANCED AND RULINGS MADE IN THE LOWER COURT.

In this suit respondent recovered in the trial court a verdict and judgment for the full value of her trunk and

contents. Both in the trial court and on appeal to the St. Louis Court of Appeals petitioner raised the question of its right to limit its liability to the sum of $100.00 in accordance with certain tariff provisions.

Petitioner's answer set up as a defense, as found by the St. Louis Court of Appeals, "all averments sufficient to bring it within the provisions of the tariff rates and regulations on file with the Interstate Commerce Commission and the Public Service Commission of Missouri" (R. 87).

At the trial petitioner offered in evidence certain baggage tariffs purporting to have been filed with the Interstate Commerce Commission by the Director General of Railroads, a decision of the Public Service Commission of Missouri, as well as certain orders of said Commission relative to railroad rates in Missouri. The trial court sustained objections to all testimony which had been offered by petitioner for the purpose of fixing its liability at $100.00 under the provisions of the Interstate Commerce Act (R. 88).

The action of the trial court in excluding this evidence and the judgment rendered in the trial court in respondent's favor for full value was approved and affirmed by said Court of Appeals, which held that the delivery by petitioner of respondent's trunk and contents to the wrong person constituted a conversion, which prevented petitioner from invoking the provisions of the contract of shipment or tariff provisions limiting its liability (R. 88).

Said Court of Appeals further held that a carrier cannot be guilty of conversion, which in law amounts to an

abandonment of the contract, and at the same time hold the shipper to the terms of a contract which it has repudiated (R. 89). It further held that the shipment in this case was an intrastate shipment, which was governed by the laws of Missouri, making petitioner liable for the full value of the property lost (R. 89).

As petitioner contends, and contended in said Court of Appeals, **the decision** of that Court, which is now sought to be reviewed, **for the first time**, injected into the case the conversion theory. Thereupon petitioner filed in said Court of Appeals its motion for a rehearing, in which it was contended by petitioner:

(1) That the decision of the said Court of Appeals was opposed to and in conflict with certain acts of Congress and certain decisions of this Court, to which attention was specifically directed in the motion for rehearing (Point III, R. 90).

(2) That the decision of said Court of Appeals denied to petitioner the rights to which it was entitled under the Act of Congress known as "Transportation Act of 1920" (Point V, R. 90-91).

(3) That there was in question in this case the validity of an authority exercised under a statute of the United States, to wit, "Transportation Act of 1920," and that the decision of said Court of Appeals denied to petitioner the right, privilege or immunity especially set up and claimed by it in such statute and authority of Congress (Point VI, R. 91).

In the original submission of the case to said Court of Appeals, petitioner contended:

(a) That by the Act of Congress, known as the Interstate Commerce Act (24 Stat. L. 379; 34 Stat. L. 584; 41 Stat. L. 483), it was made petitioner's duty to file with the Interstate Commerce Commission schedules showing rates, fares and charges for transportation of persons and property, which schedules were binding upon both carriers and shippers and were the only lawful rates which could be collected for such transportation in interstate commerce (Point I, R. 55).

(b) That under the provisions of said act, a carrier engaged in interstate commerce had the right to limit its liability for loss of, or damage to, baggage to a certain amount unless a greater value was declared by the passenger at the time of checking the baggage and that such limitation of liability was valid and binding upon both carrier and passenger (Point II, R. 55).

(c) That during the period of Federal control, the President of the United States, through the Director General of Railroads, assumed control of the operation of petitioner's line of railroads and made an order establishing a schedule of rates for all roads, including petitioner's, and covering all classes of service, included in which schedule of rates was a provision for the limitation of liability for loss of, or damage to, baggage to the sum of $100.00, unless at the time of delivering same to the carrier for transportation the passenger declared a greater value and paid an excess rate for transportation of same (Point V, R. 56).

(d) That by the Act of Congress known as the Transportation Act 1920, all rates, regulations and practices

which were in effect on February 29, 1920, should continue in force and effect until thereafter changed by state or federal authority (Point VI, R. 56).

(e) That, after said 29th day of February, 1920, and prior to the date on which respondent's trunk was lost, there had been no change by state or Federal authority in the rates, regulations and practices which were in effect on February 29th, 1920, and which governed the transportation of baggage, and that such rates, regulations and practices which were in force on February 29th, 1920, were, therefore, in full force and effect and binding upon the parties hereto at the time of respondent's loss (Point VII, R. 57).

(f) That in view of the provisions of these various Acts of Congress, as interpreted by the Supreme Court of the United States in the cases cited under the foregoing points, respectively, it was competent for your petitioner to offer upon the trial of the case evidence tending to establish the schedule of rates filed by the Director General during the period of Federal control containing the provision for the limitation of liability for loss of baggage, and tending to further establish that said limitation had not only not been changed subsequent to the termination of the period of Federal control, but that it was still in full force and effect at the time when respondent's baggage was lost (Point VII, R. 57).

ACTS OF CONGRESS RELIED UPON TO INVOKE JURISDICTION OF THIS COURT.

The particular statutory provisions under which the jurisdiction of this Court is invoked in this proceeding are: **First**, Section 6 of the Act of Congress known as the Interstate Commerce Act (24 Stat. L. 379, 34 Stat. L. 584), which is fully set out in the appendix which appears hereinafter (R. 58). **Second**, the Act of Congress known as the Federal Control Act (39 Stat. L. 645), in accordance with which the President of the United States, through the Director General of Railroads, on December 28th, 1917, took possession and assumed control of the operation of the various railroads of the United States, including petitioner's line of railroad, and, thereafter, possessed and operated such line of railroad until February 29th, 1920 (R. 63). **Third**, Section 10 of the Act of Congress of March 21st, 1918, which authorized and empowered the President of the United States, in the operation of the transportation systems while under Federal control, to initiate rates, fares, charges, classifications and regulations for the transportation of both passengers and property, which section is fully set forth in the appendix appearing hereinafter (R. 64). **Fourth**, Section 208 (a) of the Act of Congress known as the "Transportation Act 1920," which is likewise set forth in the appendix attached hereto (R. 66).

CASES, DECIDED BY THIS COURT, RELIED UPON TO SUSTAIN JURISDICTION OF THIS COURT OVER THIS CASE.

The cases decided by this Court upon which petitioner relies to sustain the jurisdiction of this Court in this case are those in which this Court has decided that a provision in a tariff filed by a carrier with the Interstate Commerce Commission, providing for the limitation of the carrier's liability in the event of loss of, or damage to, baggage, is valid and binding upon both carrier and passenger, whether such baggage be transported in interstate or intrastate commerce, and in which it has been further held by this Court that there can be no discrimination against interstate commerce and in favor of intrastate commerce, and that the theory of a conversion cannot be relied upon to defeat tariff provisions for limitation of liability of a carrier, whether such theory be provided for in a state statute or be announced in a decision of a state court. These cases are the following:

Boston & Maine R. R. v. Hooker, 233 U. S. 97;
American Railway Express Co. v. Levee, 263 U. S. 19;
Northern Pac. Ry. Co. v. State of North Dakota, 250 U. S. 135;
Cincinnati, N. O. & T. Railway Co. v. Ranken, 241 U. S. 319;
Louisville & Nashville Railroad Co. v. Maxwell, 237 U. S. 94;
Houston & Texas Railway Co. v. United States, 234 U. S. 342;

American Railway Express Co. v. Lindenburg, 260 U. S. 584;
American Express Co. v. Croninger, 226 U. S. 491;
Kansas City Southern Ry. Co. v. Carl, 227 U. S. 652;
State of New York v. United States, 257 U. S. 591;
Wisconsin R. R. Com. v. C. B. & Q. R. R., 257 U. S. 563;
Illinois Cent. R. R. v. Public Utilities Com., 245 U. S. 493.

These cases were all called to the attention of said Court of Appeals on both the original submission and in petitioner's motion for rehearing (R. 55-6 and R. 90).

In addition to these cases the following are relied on:

Lancaster et al. v. McCarty et al., 267 U. S. 427;
Georgia F. & A. Railway Co. v. Blish Milling Co., 241 U. S. 190;
American Railway Express Co. v. Daniel, 46 Sup. Ct. Rep. 15.

THE JUDGMENT SOUGHT TO BE REVIEWED IS A FINAL JUDGMENT.

The St. Louis Court of Appeals is the court of final appellate jurisdiction in that portion of Missouri in which this case arose, and in all cases in which the amount in dispute does not exceed the sum of seventy-five hundred dollars ($7500.00).

The judgment of that Court is reviewable on certiorari by the Supreme Court of Missouri only in the event that the decision of the Court of Appeals conflicts with a prior

controlling decision of the Supreme Court of the state involving the same question. In the absence of such conflict the Supreme Court of Missouri has no power to review a judgment of the St. Louis Court of Appeals.

Inasmuch as the Supreme Court of Missouri had not had occasion prior to this decision to pass upon the points involved in this case, petitioner's application to that court for its writ of certiorari was denied (R. 111).

STATEMENT OF THE CASE.

The jurisdiction of this Court is invoked in this case upon the ground that the judgment of the St. Louis Court of Appeals, which is final, is repugnant to, and in violation of, certain provisions of the Acts of Congress known as the Interstate Commerce Act, the Federal Control Act and the Transportation Act, 1920, and in conflict with decisions of this Court construing and applying such acts, and upon the further ground that there is involved the validity of a certain tariff or baggage regulation, filed with the Interstate Commerce Commission, which was denied by said Court.

The case involves the question of the validity of a stipulation in said tariff providing for the limitation of the amount of liability for loss of baggage, even though the baggage was transported in intrastate commerce. More particularly, the question for decision is whether petitioner may be held liable for a greater amount for the loss of respondent's baggage, which moved between points wholly within the State of Missouri, than that for

which, under the same conditions, it could be held liable if the baggage had been transported in interstate commerce, and whether, in view of the holding of this Court in cases to which reference will be made hereinafter, there may lawfully be such a discrimination against interstate commerce as will entitle respondent to recover the full value of her baggage, while a passenger whose baggage is lost while being carried from a point in one state to a point in another state can recover no greater sum than that provided in the tariff filed with the Interstate Commerce Commission.

Respondent was a passenger on one of petitioner's trains from Jefferson City, Missouri, to Sedalia, Missouri, on January 3rd, 1922. She purchased her ticket and checked her trunk at Jefferson City for transportation to Sedalia. She admits that, at the time she delivered the trunk to petitioner at Jefferson City, she did not declare any value on either the trunk or contents (R. 17). The trunk was carried on the train to Sedalia and was received at petitioner's depot, baggage room, at that point. Thereafter it was delivered to a local drayman, upon his presentation of a duplicate check corresponding to the check on the trunk. It is admitted by both parties that the drayman had not procured the check, which he presented, from respondent (R. 16).

In her petition, which was the original pleading filed in the trial court, she alleged that she was a passenger on the train; that in consideration of her becoming such passenger and paying the lawful and customary fare peti-

tioner agreed and promised well and safely to carry said baggage between the points named and to deliver same at destination to respondent in as good condition as when received by it, and that, in violation of said agreement, petitioner failed and neglected to deliver said baggage at its destination to her, but, in disregard of its duty, wrongfully delivered said trunk and contents to one John H. Clark (R. 2 and 3).

To this petition an answer was filed, setting up certain defenses, and at the trial of the cause evidence was offered tending to establish said defenses, all of which evidence so offered by petitioner, except the baggage check which was issued to respondent at Jefferson City, was, upon objection by respondent, excluded by the trial court. Offers were thereupon made to prove the allegations of the answer, which offers were excluded.

Inasmuch as the evidence offered was wholly documentary and is all set forth in the record, we will direct attention specifically only to the allegations of the answer which set up the following affirmative defenses:

(a) That prior to the date of respondent's loss, and by virtue of the provisions of the Interstate Commerce Act and the Federal Control Act, the Director General of Railroads had filed with the Interstate Commerce Commission a certain tariff, namely, Baggage Tariff No. 25-2, which provided that unless a greater sum was declared by a passenger and charges paid for excess value at the time of delivery to the carrier the value of the baggage checked for such passenger should be deemed and agreed

to be not in excess of one hundred dollars ($100.00), for which reason it was alleged the liability of petitioner was limited in this case to the sum of one hundred dollars ($100.00); that said tariff covered the transportation of baggage by petitioner for passengers upon its line of railroad between points within the State of Missouri, as well as points in Missouri and points in other states of the United States, and that said tariff was in force and binding upon the parties on February 29, 1920 (R. 5).

(b) That by the Act of Congress in effect on March 1, 1920, known as the Transportation Act 1920—Section 208 (a) thereof—it was provided that all rates, fares and charges and all classifications, regulations and practices in anywise changing, affecting or determining any part or the aggregate of rates, etc., which on February 29, 1920, were in effect on the lines of carriers subject to the Interstate Commerce Act, should continue in force and effect until thereafter changed by state or federal authority, respectively, or pursuant to authority of law, and that at the time of the passage of said act and prior and subsequent thereto petitioner was a carrier subject to the Interstate Commerce Act, and that the rules and tariffs governing the transportation of baggage so promulgated and filed by the Director General of Railroads, which were in effect on February 29th, 1920, were not, after said 1st day of March, 1920, and prior to said 3rd day of January, 1922, changed by either state or federal authority, or pursuant to authority of law, and that said rules and tariffs were in full force and effect and binding upon both

parties on said 3rd day of January, 1922, and that the baggage of plaintiff was accepted for transportation subject to said rules and tariffs (R. 6).

(c) Said answer then averred and petitioner offered to prove that in accordance with the laws of the State of Missouri, and prior to said 3rd day of January, 1922, petitioner had been authorized by the Public Service Commission of Missouri to file and had filed with said Commission its tariffs containing its rates, fares and charges for the transportation of property between points in said state, in and by which schedules it was provided that unless a greater sum was declared by a passenger and charges paid for excess value at the time of delivery of baggage to the carrier, the value of the property belonging to or checked for such passenger should be deemed and agreed to be not in excess of one hundred dollars ($100.00), and that in the event of loss or damage to same the liability of petitioner would be limited to one hundred dollars ($100.00) (R. 7).

It was finally averred in said answer that at the time of the delivery of said baggage by respondent, she neither declared any greater sum or value thereof than one hundred dollars ($100.00) nor paid, nor offered to pay, charges for the value of said property, if any, in excess of one hundred dollars ($100.00), for which reason she was not entitled to recover any greater sum than one hundred dollars ($100.00) (R. 8).

TRIAL OF CAUSE.

There is no controversy in this case over the facts which were admitted in evidence, as those facts consisted of certain testimony by respondent and of an agreed statement of facts.

Respondent left Jefferson City, Missouri, on the evening of January 3rd, 1922, at 5:25 and reached Sedalia at about 7 o'clock (R. 15 and 16). She inquired for her trunk the next day and was later informed that the trunk was stolen (R. 16). She further testified that she attended to the checking of the trunk at Jefferson City, and that she then declared no value on either trunk or contents (R. 17).

With respect to the alleged misdelivery of the trunk, the facts were stipulated to be that the trunk was delivered to petitioner's agent at Jefferson City, Missouri, and checked by him for transportation to Sedalia, Missouri; that said trunk reached Sedalia and was received by petitioner's agent at that point on the evening of January 3, 1922; that shortly after the arrival of said trunk at Sedalia, while it was in petitioner's baggage room in its station at that place, one John H. Clark removed the check which had been attached to said trunk at Jefferson City and substituted and attached to said trunk another check in lieu thereof, the duplicate of which latter check was in the possession of said Clark; that at some time during the night of said January 3rd or early morning of January 4th the trunk and contents

were delivered by petitioner's agent at Sedalia to a local drayman, acting as the agent of said Clark, upon the presentation by said drayman of the duplicate check above referred to (R. 13 and 14).

Petitioner offered the check which was issued to respondent at Jefferson City, which was identified and produced by her at the trial, and which contained the words: "Transported subject to tariff regulations," and same was admitted in evidence (R. 35).

Petitioner next offered in evidence the tariff, namely, Baggage Tariff No. 25-2, which was on file with the Interstate Commerce Commission and referred to in its answer. It also offered the decision and order of the Public Service Commission of Missouri granting permission to petitioner for the filing of the same tariff (R. 24 and 25).

This tariff, No. 25-2, contained the following provision:

> Rule 10. "Subject to limitations shown in rule 9, one hundred and fifty (150) pounds of baggage, not exceeding one hundred dollars ($100.00) in value, may be checked without additional charge for each adult passenger" (R. 20).
>
> Rule 11. "Unless a greater sum is declared by a passenger and charges paid for excess value (see note) at time of delivery to carrier, the value of property belonging to or checked for a passenger shall be deemed and agreed to be not in excess of the amounts specified in rules 5, 6 and 10, and the carriers issuing and participating in this tariff will not accept claim for a greater sum in case of loss or damage.

"If passenger declares according to the form prescribed by checking carrier, a greater value than specified in the rules mentioned in the preceding paragraph, there will be an additional charge at the rate of ten (10) cents for each one hundred dollars ($100.00) or fraction thereof above such agreed maximum value" (R. 21).

Rules 5 and 6, referred to in rule 11, were offered, showing that they referred, respectively, to articles other than baggage and to public entertainment paraphernalia (R. 21).

Petitioner then offered evidence tending to establish that said baggage tariff was in force in Missouri on the date on which respondent's baggage was lost (R. 33).

As stated, all of this evidence was excluded. The case was thereupon submitted to the jury, which returned a verdict in favor of respondent and against petitioner for the full value of the trunk and contents, namely, for the sum of one thousand and sixty dollars ($1,060.00), on which verdict judgment was duly entered (R. a).

An appeal was taken from that judgment to the St. Louis Court of Appeals, and upon submission to that Court the judgment of the trial court was affirmed.

The Court of Appeals decided the case upon the theory that the mere act of petitioner in delivering respondent's trunk to another person constituted not only a conversion of the trunk, but an abandonment, by petitioner, of the contract of transportation, which precluded it from relying upon the rates or tariff regulations governing the transportation of baggage (R. 89).

In so deciding that Court said:

> "A misdelivery, or the delivery to a wrong person, by a carrier of an article intrusted to it to be carried, is a conversion; and this is true even though the carrier offered to, and did, return the trunk after it had been recovered, minus the contents (Marshall & Michel Grain Co. v. K. C. Ft. S. & M. R. Co., 176 Mo. 480, 75 S. W. 638). In such a situation the conversion prevents defendant from invoking the provisions of the contract of shipment or tariff provisions limiting its liability. Upon a conversion, the law creates a new relation between the parties in that the carrier is deemed to have abandoned the contract of shipment. Because of the tort the carrier cannot insist upon a stipulation that his liability was to be limited to a certain sum (R. 88). * * *
>
> "A carrier cannot be guilty of a conversion which in law amounts to an abandonment of the contract and at the same time hold the shipper to the terms of a contract which it has repudiated. We cannot construe the provision of the shipping contract fixing the liability of the carrier based upon a stated value to extend to a case of conversion such as this" (R. 89).

That Court further held that as the shipment in this case was an intrastate shipment, under the Missouri authorities, petitioner was guilty of conversion by the mere act of delivering respondent's trunk to the wrong person, and was, therefore, liable for the full value (R. 89).

In due time petitioner filed its motion for a rehearing in said Court of Appeals, in which the attention of that Court was specifically directed to the Acts of Congress herein referred to, as well as to the decisions of this

Court construing such acts as decisive of this case, as petitioner contended (R. 90-91).

Petitioner filed in support of said motion for rehearing its brief or suggestions, which will be found in the record at pages 91 to 98.

In these suggestions we referred to the decision of this Court in the case of American Railway Express Company v. Levee, 263 U. S. 19, where, as petitioner contends, it was clearly held that a provision in a tariff for limitation of liability could not be escaped "by suing in trover and laying the failure to deliver as a conversion if that had been done," and wherein it was further held that "no more can it be escaped by a state law, **or decision** that a failure to deliver shall establish a conversion unless explained" (R. 94).

Petitioner's motion for rehearing was overruled (R. 100), whereupon application was made, as stated, to the Supreme Court of Missouri for its writ of certiorari to review said judgment, which application was denied (R. 111).

Petitioner then applied to this Court for the issuance of its writ of certiorari, which was granted (R. 112).

ASSIGNMENT OF ERRORS.

I.

The St. Louis Court of Appeals erred in holding that the mere delivery by petitioner of respondent's trunk to a third person, who presented a check corresponding to the check on the trunk, which therefore entitled him to possession of the trunk, constituted a conversion of it by petitioner.

II.

Said Court of Appeals further erred in holding, not only that such mere misdelivery of respondent's trunk to said third person constituted a conversion of it, but that such conversion prevented petitioner from invoking the tariff provisions limiting its liability, and that such conversion created a new relationship between the parties, in that petitioner is deemed to have abandoned the contract of shipment, thereby precluding it from insisting upon the tariff provision for limitation of liability for loss of the trunk.

III.

Said Court of Appeals further erred in holding that inasmuch as respondent's baggage was transported between points in the State of Missouri, the rights of the parties were to be determined and governed by the laws

of Missouri rather than by the laws of the United States and the decisions of this Court.

IV.

Said Court of Appeals further erred in failing and refusing to follow and be governed in its decision of this case by the decisions of this Court referred to and cited herein, and particularly the cases of

American Railway Express Co. v. Levee, 263 U. S. 19;
Houston & Texas Ry. Co. v. United States, 234 U. S. 342;
State of New York v. United States, 257 U. S. 591;
Wisconsin R. R. Com. v. C. B. & Q. R. R., 257 U. S. 563;
Illinois Cent R. R. v. Public Utilities Com., 245 U. S. 493.

SUMMARY OF ARGUMENT AND BRIEF WITH POINTS, AUTHORITIES AND STATUTES RELIED UPON.

I.

Validity of the Tariff Provision as Applied to Intrastate Transportation.

The fact that respondent's baggage was to be transported between points wholly within the State of Missouri does not preclude the enforcement of the provision in the tariff for a limited liability in the event of loss of, or damage to, such baggage.

It being conceded by the testimony of respondent that at the time she delivered her trunk for transportation she did not declare any value thereof, the provision in the tariff limiting liability of petitioner to one hundred dollars ($100.00) is valid with respect to respondent's claim, even though, as stated, her baggage was to be carried in intrastate commerce, for the following reasons:

(a) By the Act of Congress, known as the Interstate Commerce Act (24 Stat. L. 379, 34 Stat. L. 584, 41 Stat. L. 483), Sec. 1, it is made the duty of every common carrier, subject to the provisions of said act, to file with the Interstate Commerce Commission certain schedules showing all of the rates, fares and charges for transportation between different points on its own route and between points on its own route and points on the route of another carrier.

By paragraph (7) of section 6 of the same act it is provided that no carrier shall engage or participate in the transportation of passengers or property unless such rates, fares and charges have been filed and published in accordance with the provisions of said act, and, further, that no carrier shall charge, or demand, or collect, or receive a greater, or less, or different compensation for such transportation of passengers or baggage, "or for any services in connection therewith," between the points named in such tariff than the rates, fares and charges which are specified in such tariff.

Such rates, fares and charges so filed and published are binding upon both carriers and passengers, and are the only lawful rates, fares and charges which may be made or collected by the carrier for transportation of passengers and property in interstate commerce.

Under the provisions of said act, a carrier engaged in interstate commerce has the right to file with the Interstate Commerce Commission a tariff for the transportation of baggage in **interstate** commerce containing a provision for the limitation of liability and has the right, by virtue thereof, to limit its liability for loss of, or damage to, such baggage to a certain amount, unless a greater value is declared by the passenger at the time of delivering and checking the baggage for transportation, and such limitation of liability is valid and binding upon both carrier and passenger.

24 Stat. L. 379, as amended by 34 Stat. L. 584 and 41 Stat. L. 483;

Boston & Maine Railroad v. Hooker, 233 U. S. 97;
Cincinnati, N. O. & T. Railway Co. v. Ranken, 241 U. S. 319;
American Railway Express Co. v. Levee, 263 U. S. 19;
Mobile & O. Railroad Co. v. Sawmill Co., 251 S. W. 434;
Louisville & N. Railroad Co. v. Maxwell, 237 U. S. 94;
Hines v. Burnett, 107 S. E. 657;
Powell v. Hines, 104 S. E. 533;
American Railway Express Co. v. Lindenburg, 260 U. S. 584;
American Express Co. v. Croninger, 226 U. S. 491;
Kansas City Southern Ry. Co. v. Carl, 227 U. S. 652.

(b) In accordance with the Act of Congress of August 29, 1916 (39 Stat. L. 645) the President of the United States, through the Director General of Railroads, on September 28, 1917, took possession and assumed control of the operation of the various railroads of the United States, including petitioner's line of railroad, and thereafter and until February 29, 1920, petitioner's railroad was under the operation of the Federal Government.

39 Stat. L. 645.
Proclamation of the President, Dec. 26, 1917.

(c) Section 10 of the Act of Congress of March 21, 1918, known as the Federal Control Act, as amended, provided that the President, in the operation of the transportation systems, while under Federal control, might

initiate rates, fares, charges, classifications and regulations for the transportation of both passengers and property.

And thereafter the Director General of Railroads made an order establishing a schedule of rates for all roads under his control, including petitioner's road, effective in June, 1918, and covering **all** classes of service.

The rates so established by the Director General, especially the schedule of rates applicable to the transportation of baggage, applied equally to **both** interstate and intrastate transportation.

Northern Pacific Ry. Co. v. State of North Dakota, 250 U. S. 135.

In that case this Court said:

"On May 25th, 1918, the Director General made an order establishing a schedule of rates for **all** roads under his control and covering **all** classes of service, **intrastate** as well as interstate. The order made these rates effective on designated dates in the month of June."

* * * * * * *

"The elementary principle that under the Constitution the authority of the Government of the United States is paramount, when exerted as to subjects concerning which it has the power to control, is indisputable. This being true, it results that although authority to regulate within a given sphere may exist in both the United States and in the states, when the former calls into play constitutional authority within such general sphere, the necessary effect of doing so

is that, to the extent that any conflict arises, the state power is limited, since, in case of conflict, that which is paramount necessarily controls that which is subordinate."

It was held in that case that under the Federal Control Act the Government, through the President and Interstate Commerce Commission, was given the power to fix rates of intrastate traffic superseding the power of the state over that subject.

(d) Upon the termination of the period of Federal control of petitioner's railroad, to wit, on February 29th, 1920, there was on file with the Interstate Commerce Commission the tariff designated, in this record, as Baggage Tariff No. 25-2, which was offered in evidence upon the trial by petitioner (R. 21 and 22). On February 29th, 1920, that tariff was valid and binding upon both passenger and carrier and, as construed by this Court in the cases cited herein, was alike applicable to, and governed the transportation of, baggage over the lines of petitioner's road not only between points in different states, but between points within the State of Missouri.

Northern Pacific Ry. Co. v. State of North Dakota, 250 U. S. 135;
Houston & Texas Ry. Co. v. United States, 234 U. S. 342;
Lancaster v. McCarty, 267 U. S. 427;
Powell v. Hines, 104 S. E. 533;
Hines v. Burnett, 107 S. E. 657;
American Railway Express Co. v. Lindenburg, 260 U. S. 584;

American Railway Express Co. v. Levee, 263 U. S. 19;
State of New York v. United States, 257 U. S. 591;
Wisconsin R. R. Com. v. C. B. & Q. R. R., 257 U. S. 563;
Illinois Central R. R. v. Public Utilities Com., 245 U. S. 493.

There can be no doubt of the proposition, therefore, that down to February 29th, 1920, petitioner had the right, in accordance with the provisions of said tariff, and by virtue of the foregoing provisions of said Acts of Congress, and of the decisions of this Court construing them, to limit its liability for the loss of baggage transported between points in Missouri. Had respondent suffered the loss for which she sues at any time during the period of Federal control she certainly could not have recovered more than one hundred dollars ($100.00).

Now, on March 1st, 1920, the Act of Congress, known as the Transportation Act 1920, went into effect. Section 208 (a) of that act provided as follows:

"All rates, fares and charges, and all classifications, regulations and practices in anywise changing, affecting or determining any part or the aggregate of rates, fares or charges, or the value of the service rendered which, on February 29th, 1920, are in effect on the lines of carriers subject to the Interstate Commerce Act, shall continue in force and effect until thereafter changed by state or federal authority, re-

spectively, or pursuant to authority of law; but prior to September 1st, 1920, no such rate, fare or charge shall be reduced and no such classification, regulation or practice shall be changed in such manner as to reduce any such rate, fare or charge unless such reduction or change is approved by the Commission."

In the case of Michigan Central Railroad Company v. Michigan Public Utilities Commission, 271 Fed. 319, the Court held that by this provision of the Transportation Act it was clearly intended that state statutes or regulations fixing intrastate rates, which were suspended during Federal control, should **not** automatically again go into effect on the cessation of such control, but that the rates then in effect, **both** interstate and intrastate, should continue in force until thereafter changed by competent authority to reasonably conform to changed conditions.

When Congress thus provided that such rates, fares and charges as were mentioned in this section should continue in force after February 29, 1920, and until changed by state or federal authority, it is, of course, to be presumed that it was its intention to likewise continue in force not only the rates and charges themselves, but also such construction and interpretation of such rates and charges as had been announced by this Court, and, therefore, unless those rates and charges were changed by either state or Federal authority between February 29th, 1920, and January 3, 1922, on which date this loss occurred, then the tariff filed by the Director General during the period of Federal control, which was on file when the Transportation Act took effect, containing the provision for limitation of

liability for loss of baggage, as such tariff was construed by this Court, authorized petitioner to limit its liability for the loss of respondent's baggage, even though same was lost while being transported between points wholly within the State of Missouri.

In the case of

Powell v. Hines, Director General, 104 S. E. 533,

the plaintiff sued for full value of baggage which was lost while being transported between points within the State of North Carolina. The shipment there, as here, was intrastate, and the Court held that the provision in the tariff filed by the Director General with the Interstate Commerce Commission for limitation of liability was valid and binding upon the parties, even though plaintiff's baggage was transported between points in the same state.

The same conclusion was reached with reference to intrastate transportation of baggage in

Hines, Director General, v. Burnett, 107 S. E. 657.

In this case the Court said:

> "The authority of the Director General of Railroads to promulgate baggage regulation limiting the amount of recovery to $100.00 where no value is declared on intrastate as well as interstate transportation, the sufficiency of the notice of the regulation, and every objection raised to the application of the Federal Control Act have been settled by decisions of the Supreme Court adversely to the plaintiff's claim."

Petitioner sought to prove that said tariff, including the provision for limitation of liability for loss of baggage, had not only not been changed prior to the date on which respondent's baggage was lost, by either state or Federal authority or pursuant to authority of law, but that the filing by petitioner of the same tariff, namely, Baggage Tariff No. 25-2, had been authorized by, and filed with, the Public Service Commission of Missouri, which is the body vested by the law of that state with similar power and authority, with respect to intrastate rates, to that possessed by the Interstate Commerce Commission with respect to interstate rates; which evidence was excluded (R. 23-32).

If the evidence offered by petitioner had been admitted by the trial court, it would have been established without contradiction, first, that on February 29, 1920, this tariff was on file with the Interstate Commerce Commission, governing the transportation of baggage on petitioner's line of railroad, not only between points in different states, but between points wholly within the State of Missouri, and that it contained the provision for the limitation of liability in the event of loss of such baggage, which was valid and binding upon the parties to this suit, and, secondly, that such tariff and such provision for limitation of liability was likewise on file with, and approved by, the Public Service Commission of Missouri.

We submit that the evidence offered was competent and should have been admitted, and that the decision of the St. Louis Court of Appeals, approving the ruling of the

trial court in excluding such evidence, has the effect of depriving petitioner of the rights and benefits accruing to it by virtue of the provisions of the acts of Congress hereinbefore referred to and of the decisions of this Court in the cases hereinbefore cited.

The holding of the Court of Appeals that the ruling of the trial court excluding this tariff was proper is further in conflict with the decisions of this Court in the cases of

American Railway Express Co. v. Daniel, 46 Sup. Ct. Rep. 15, and
Southern Express Co. v. Beyers, 240 U. S. 612.

In

American Railway Express Co. v. Daniel (decided by this Court on Oct. 26, 1925), 46 Sup. Ct. Rep. 15,

this Court held that a provision in a receipt issued by an express company for limitation of liability was valid and that the schedules filed with the Interstate Commerce Commission, in accordance with which the express company was allowed to limit its liability, were competent evidence and should have been admitted.

In that case a shipper delivered a parcel to the express company for transportation, but same was not delivered at destination. The express company admitted liability for $50.00, but claimed it could not be held for more because the receipt it gave for the parcel fixed that sum as the value of the goods, and a higher valuation

thereof required the payment of a higher rate. In the state court the judgment was for the plaintiff for the full amount. In deciding the case this Court said:

> "The rate for carriage of property valued at more than $50.00 was higher than that charged. **The schedules filed** with the Interstate Commerce Commission **were offered** to show the rates, **but were excluded**, and the judgment was affirmed, seemingly on the ground that the sending agent was not shown to have known that a lower valuation secured a lower rate and that the carrier knew that the agent was ignorant of the true value of the goods. No argument is made for respondent and it is plain that the judgment cannot be sustained. The carrier's knowledge of the agent's ignorance of the value was immaterial. It acted in good faith. **The carrier's schedules should have been admitted and bound both parties.** (Cases cited.) The sender is bound to know the relation established by them between values and rates." (Cases cited.)

Discussing the right of an express company to limit its liability for damages to an interstate shipment, as well as the question of the admissibility in evidence of schedules on file with the Interstate Commerce Commission, this Court, in

Southern Express Co. v. Beyers, 240 U. S. 612,

said:

> "Manifestly the shipment was interstate commerce; and under the settled doctrine established by our former opinions, rights and liabilities in connection

therewith depend upon acts of Congress, the bill-of-lading and common-law principles accepted and enforced by the federal courts. In order to determine the validity and effect of a restriction upon liability contained in such bills, **it is important,** if not, indeed, essential, **to consider the applicable schedules on file with the Commission.** (Cases cited.) It was plain error to exclude the rate schedules."

We respectfully submit, therefore, that, under these authorities, petitioner had the right to limit its liability in accordance with the provision of the tariff, even though the shipment was intrastate, and that the evidence offered should have been admitted, and when so admitted, petitioner's liability cannot exceed the sum of one hundred dollars ($100.00).

II.

The Conversion Theory.

As we have already indicated, the St. Louis Court of Appeals, in arriving at its decision, declined to consider this tariff provision, or its effect upon the rights of the parties to this suit.

On the contrary, its holding was that the mere act of petitioner in delivering respondent's trunk to the wrong party constituted a conversion of the trunk and an aban-

donment of the contract of transportation, precluding petitioner from invoking the tariff provision. This conclusion was reached, despite the fact that the suit was brought by respondent as for a violation of the contract of transportation and not upon the theory of conversion. The suit is one for the recovery of the value of the property lost and not for damages for conversion.

Nevertheless, we submit that the theory of conversion cannot be invoked so as to authorize a recovery in this case for the full amount of respondent's loss.

Under the decision of this Court in **American Railway Express Co. v. Levee, 263 U. S. 19,** the provision in a tariff filed with the Interstate Commerce Commission, limiting the liability of the carrier for loss of a trunk and contents, which had been transported in interstate commerce, cannot be evaded by suing for a conversion of the trunk, even though the carrier failed to deliver the trunk at destination.

This Court specifically held that the effect of such provision for limitation of liability could not be avoided or escaped by bringing the suit upon that theory, and if that be true, it certainly cannot be avoided or escaped by deciding a suit not brought upon that theory as if it had been so brought.

In that case it was said:

> "Coming to the merits, the limitation of liability was valid, whatever may be the law of the state in cases within its control (Adams Express Co. v. Croninger, 226 U. S. 491; Union Pacific R. R. Co. v. Burke,

255 U. S. 317, 321; American Ry. Express Co. v. Lindenburg, 260 U. S. 584). **The effect of the stipulation could not have been escaped by suing in trover and laying the failure to deliver as a conversion if that had been done** (Georgia, Florida & Alabama Ry. Co. v. Blish Milling Co., 241 U. S. 190, 197). No more can it be escaped by a state law **or decision that a failure to deliver shall establish a conversion unless explained.** The law of the United States cannot be evaded by the forms of local practice."

This Court likewise held, in the case of **Georgia F. & A. Railway Co. v. Blish Milling Co., 241 U. S. 190**—which was prior to federal control—that the effect of a stipulation in a bill of lading covering an interstate shipment, requiring notice of claim for misdelivery, could not be escaped by the form of the action, which, in that case, was one in trover as for a conversion, and further held that if a suit could not be maintained for damages against the delivering carrier without the required notice, it could not be maintained for conversion. The stipulation there under consideration was held to be of such binding effect upon the parties that it could not be waived by the carrier.

By the judgment of the St. Louis Court of Appeals respondent in this case is enabled to do the very thing which this Court, in the Blish and Levee cases, held could not be done, namely, to escape the effect of the tariff provision by relying upon the theory of conversion.

Even if, as the St. Louis Court of Appeals thinks, this case is to be distinguished from the Levee case because

respondent's baggage moved between points within the State of Missouri, whereas in the Levee case the trunk was transported in interstate commerce, we submit that the mere delivery of respondent's trunk to a third person, who presented a check for it which matched with that on her trunk, did not constitute such a conversion as that Court ascribed to the act.

There was neither allegation nor proof by respondent of any negligence on the part of petitioner in connection with the substitution by Clark of the check on this trunk. Petitioner exercised no act of ownership over respondent's baggage at any time while it was in its possession. It did not profit in any way by the delivery of it to the drayman who presented the check for it. It had no notice that respondent was the owner of the trunk or that Clark was not the owner of it, or that the drayman did not possess full authority to obtain it for the owner.

The theory that the delivery by a carrier of property entrusted to it for transportation to a person other than the owner or the one entitled to receive it, or, as it is called, a misdelivery of the property, constitutes a conversion, arose and has been, for the most part at least, applied in cases involving the shipment of goods by freight where a bill of lading is issued, which usually contains the express provision that the surrender of the bill of lading, properly endorsed, should be required before the delivery of the shipment. In such a case, if the goods are delivered to one who demands them without the surrender of the bill of lading, the misdelivery, so-

called, is held to constitute a conversion. (See King v. Barbain, 249 Fed. 303 [Circuit Court of Appeals, Sixth Circuit]; Atchison, T. & S. F. Ry. Co. v. Investment Co., 247 Fed. 265 [Circuit Court of Appeals, Eighth Circuit].)

The case of **Nanson v. Jacob, 93 Mo. 331**, was cited by the Court in Railway Co. v. International Land & Inv. Co., supra, and, in the former case, the Supreme Court of Missouri said:

> "Common carriers, by reason of the nature of their business, which imperatively requires them to receive and forward goods when tendered in the usual course of their business, have long formed an exception to the stringency of general rules in respect to what constitutes, in similar cases, a conversion. * * *
>
> "A conversion may be proved in three ways: (1) By a tortious taking; (2) by any use or appropriation to the use of the person in possession, indicating a claim of right in opposition to the rights of the owner; (3) by a refusal to give up possession to the owner on demand. (Authority cited.) 'The idea of property is of the essence of a conversion.' "

The case of **Marshall etc. Grain Co. v. Railway Co., 176 Mo. 480**, cited by the St. Louis Court of Appeals in support of its holding that the act of petitioner in delivering respondent's trunk to a third person constituted a conversion, was one which involved the shipment of freight under a bill of lading.

We submit that if the mere act of petitioner in delivering respondent's trunk to a drayman, who produced a check corresponding to the check on the trunk, operated

as a conversion by petitioner of the trunk, then in the great majority of cases, especially in the larger cities where baggage is handled at terminal depots, and where it is the almost universal custom for a transfer company or a drayman to call for baggage, presenting the proper checks therefor, the railroads of this country are daily and hourly guilty of conversion of such baggage.

A baggage check, unlike a bill of lading, is not a negotiable instrument, but is transferable by mere delivery. In accordance with the way in which baggage is handled at destination at the present time it very seldom happens that the owner of a trunk appears at the baggage office in the station with his check to claim his own trunk. On the contrary, the almost universal custom is for the check to be presented by a drayman, just as was done in this case, and for those in charge of the baggage room to deliver the particular trunk to the drayman upon presentation of a check corresponding, as did the one presented in this case, with that on the baggage.

In this case there was neither a tortious taking of this trunk by petitioner nor appropriation by petitioner, indicating a claim of right, in opposition to the rights of respondent, nor was there a refusal to give possession of it to respondent on demand.

We submit upon this branch of the case, therefore, that under the stipulated facts and circumstances surrounding the alleged misdelivery of this trunk there was no conversion of it by petitioner; that under the decision of this Court in the Levee case the effect of this tariff could not be evaded by setting up the theory of conversion, and that

in deciding, as it did, the effect of the decision by the St. Louis Court of Appeals is to deprive petitioner of the rights and benefits accruing to it by virtue of the law as announced by this Court.

III.

The Judgment of the Court of Appeals Cannot Stand, Because It Authorizes a Discrimination Against Interstate Commerce.

If, however, the decisions of this Court heretofore cited involved either baggage transported in interstate commerce, as suggested by the court below, or related to baggage and other goods transported in intrastate commerce, during the period of Federal control, and that this case is to be distinguished from those because of that difference, we then submit that petitioner was still entitled to limit its liability in this case, because the effect of the decision of the St. Louis Court of Appeals is to create and enforce a discrimination in favor of the owner of baggage moving in intrastate commerce as against the owner of baggage moving in interstate commerce in cases involving identically the same character of loss, and, therefore, the decision of that Court is in conflict with the law as announced by this Court in the case of **Houston & Texas Ry. v. U. S., 234 U. S. 342**, which was decided prior to the period of federal control and with the following cases:

Western Union Telegraph Co. v. Esteve Bros. Co., 256 U. S. 566;

Lancaster et al. v. McCarty, 267 U. S. 427;
State of New York v. United States, 257 U. S. 591;
Wisconsin R. R. Commission v. C. B. & Q. R. R. Co., 275 U. S. 563;
Illinois Central R. R. Co. v. Public Utilities Commission, 245 U. S. 493.

In the first case, usually referred to as the Shreveport case, this Court said:

> "First. It is unnecessary to repeat what has frequently been said by this Court with respect to the complete and paramount character of the power confided to Congress to regulate commerce among the several states. It is of the essence of this power that where it exists it dominates. Interstate trade was not left to be destroyed or impeded by the rivalries of local governments."
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> • • • • • • •
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> "By virtue of the comprehensive terms of the grant, the authority of Congress is at all times adequate to meet the varying exigencies that arise and to protect the national interests by securing the freedom of interstate commercial intercourse from local control."
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> • • • • • • •
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> "Its authority, extending to these interstate carriers as instruments of interstate commerce, necessarily embraces the right to control their operations in all matters having such a close and substantial relation to interstate traffic that the control is essential or appropriate to the security of that traffic, to the efficiency of the interstate service, and to the maintenance of conditions under which interstate commerce may be conducted upon fair terms and

without molestation or hindrance. As it is competent for Congress to legislate to these ends, unquestionably it may seek their attainment by requiring that **the agencies of interstate commerce shall not be used in such manner as to cripple, retard or destroy it. The fact that carriers are instruments of intrastate commerce**, as well as interstate commerce, **does not derogate from the complete and paramount authority of Congress over the latter** or preclude the federal power from being exerted to prevent **the intrastate operations** of such carriers from being made a means of injury to that which has been confided to federal care. Wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress, and not the state, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the state, and not the nation, would be supreme within the national field."

* * * * * * *

"While these decisions sustaining the federal power relate to measures adopted in the interest of the safety of persons and property, they illustrate the principle that Congress, in the exercise of its paramount power, may prevent the common instrumentalities of interstate and intrastate commercial intercourse from being used in their intrastate operations to the injury of interstate commerce. This is not to say that Congress possesses the authority to regulate the internal commerce of a state, as such, but that it does possess the power to foster and protect interstate commerce, and to take all measures necessary or appropriate to that end, although intrastate trans-

actions of interstate carriers may thereby be controlled.

"This principle is applicable here. We find no reason to doubt that Congress is entitled to keep the highways of interstate communication open to interstate traffic upon fair and equal terms. That an unjust discrimination in the rates of a common carrier, by which one person or locality is unduly favored as against another under substantially similar conditions of traffic, constitutes an evil is undeniable; and where this evil consists in the action of an interstate carrier in unreasonably discriminating against interstate traffic over its line, the authority of Congress to prevent it is equally clear. It is immaterial, so far as the protecting power of Congress is concerned, that the discrimination arises from intrastate rates as compared with interstate rates. The use of the instrument of interstate commerce in a discriminatory manner so as to inflict injury upon that commerce, or some part thereof, furnishes abundant ground for federal intervention. Nor can the attempted exercise of state authority alter the matter, where Congress has acted, for a state may not authorize the carrier to do that which Congress is entitled to forbid and has forbidden.

"It is also to be noted—as the Government has well said in its argument in support of the Commission's order—that the power to deal with the relation between the two kinds of rates, as a relation, lies exclusively with Congress. It is manifest that the state cannot fix the relation of the carrier's interstate and intrastate charges without directly interfering with the former, unless it simply follows the standard set by federal authority."

This case was followed and the same principle again announced by this Court in the case of Lancaster, Receiver, v. McCarty, 267 U. S. 427.

That case involved a claim for damages for injury to some property shipped over the lines of the Texas & Pacific Railway Company from Fort Worth to Cisco, Texas. **The movement was wholly intrastate.** In holding that the rights of the parties were to be determined by the regulations of the Interstate Commerce Commission, this Court said:

> "The real issue here is whether the amount of the damages for the admitted injury should be measured by the statutory law of Texas or by the regulations of the Interstate Commerce Commission with respect to the classification of traffic and fixing of rates, as directed by it in accordance with the decree of the Commerce Court of the United States, affirmed by this Court in Houston & Texas Ry. Co. v. U. S., 243 U. S. 342, known as the Shreveport case * * *.
>
> "The transportation began at Fort Worth, Texas, and ended at Cisco, Texas. It was carried on under a bill of lading according to the forms of the Interstate Commerce Commission, which provided that the rates should be 70 cents per hundred pounds on rugs classified as not exceeding in value seventy-five dollars ($75.00). The bill of lading was stamped with the following notation: 'Valuation on rugs less than $75.00 per hundred pounds.' The rugs in the transit were much damaged by acid and were said to be worth but $5.00 apiece after the damage. The shippers claim that their value when shipped was $95.00

apiece. Under the valuation noted on the bill of lading their value could not have exceeded $60.00, because each rug weighed forty pounds."

In this case the highest court of Texas—the Texas Court of Civil Appeals—relied upon Article 708 of the Revised Statutes of Texas, which provided that railroad companies within the state should not limit or restrict their liability, as it existed at common law, by any general or special notice, or by inserting exceptions in the bill of lading or by memorandum given upon receipt of the goods for transportation, or in any other manner, and that any such special agreement should be invalid. The rugs were shipped after the second Cummins Amendment to the Interstate Commerce Act, which permitted to carriers a limitation of liability upon property received for transportation, concerning which the carrier shall have been authorized by the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the release value of the property.

The question for decision was whether the rights of the parties were to be determined by the statute of Texas or by the order of the Interstate Commerce Commission.

This Court held that the order of the Interstate Commerce Commission applied, saying:

"This Western classification which the carrier applied in this case was adopted by the railroads under

the authority of the Interstate Commerce Commission thus sustained in the Shreveport case. That authority rested on the supremacy of federal authority in respect to interstate commerce. The intrastate rates fixed by the Texas State Railway Commission from Houston and Dallas eastward to Texas points were a discrimination against the interstate traffic between Shreveport and those same points, and, therefore, it was held to be within the power of the Interstate Commerce Commission, in preventing such unlawful discrimination under the Interstate Commerce Act, to direct the railroads to ignore the Texas Commission rates and to establish rates not unduly discriminating against interstate commerce in intrastate traffic.

"The Interstate Commerce Commission, therefore, had full authority to issue its order for the adoption of the Western classification for **intrastate** points between Houston and Cisco, both in Texas. The conflict between the Revised Statutes of Texas and the order of the Interstate Commerce Commission can only be settled by recognition of **the supremacy of the federal authority.** It is plain from the agreed statement of facts that the only recovery which could be had under the Western classification in this case was less than $60.00. **The limitation of liability** was in accordance with the second Cummins Amendment, was properly agreed to and **was binding upon the shipper as well as the carrier.**"

In

Western Union Telegraph Co. v. Esteve Bros. Co., 256 U. S. 566, 571,

this Court said:

> "The lawful rate having been established, the company was by the provisions of Section 3 of the Act to Regulate Commerce prohibited from granting to anyone an undue preference or advantage over the public generally * * * If the general public, upon paying the rate for an unrepeated message, accepted substantially the risk of error involved in transmitting the message, the company could not, without granting an undue preference or advantage, extend different bills to the plaintiffs here. The limitation of liability was an inherent part of the rate. The company could no more depart from it than it could depart from the amount charged for the service rendered.
>
> "The Act of 1910 introduced a new principle into the legal relations of the telegraph companies with their patrons, which dominated and modified the principles previously governing them. Before the act the companies had a common-law liability, from which they might or might not extricate themselves, according to views of policy prevailing in the several states. Thereafter, for all messages sent in interstate or foreign commerce, the outstanding consideration became that of uniformity and equality of rates. Uniformity demanded that the rate will be the whole duty and the whole liability of the company. It could not be varied by agreement. Still less could it be varied by lack of agreement. The rate became, not as before, a matter of contract by which a legal liability could be modified, but a mat-

ter of law by which a uniform liability was imposed.

"Assent to the terms of the rate was rendered material because when the rate is used dissent is without effect. This principle was established in cases involving the limitation upon a carrier's liability for baggage by Boston & Maine R. R. Co. v. Hooker, 233 U. S. 97, and Galveston, H. & S. Ry. Co. v. Woodberry, 254 U. S. 357."

In the Wisconsin case,

Wisconsin Railroad Commission v. C. B. & Q. R. R. Co., 257 U. S. 563, 588,

it was said:

"To this the same answer must be made as was made in the Shreveport case (234 U. S. 342, 358), that such orders as to intrastate traffic are merely incidental to the regulation of interstate commerce and necessary to its efficiency. Effective control of the one must embrace some control over the other, in view of the blending of both in actual operation. The same rails and the same cars carry both. The same men conduct them. Commerce is a unit and does not regard state lines, and while, under the Constitution, interstate and intrastate commerce are ordinarily subject to regulation by different sovereignties, yet when they are so mingled together that the supreme authority, the nation, cannot exercise complete effective control over interstate commerce without incidental regulation of intrastate commerce, such incidental regulation is not an invasion of state authority or a violation of the proviso * * *. It is said that our conclusion gives the Commission unified control of inter-

state and intrastate commerce. It is only unified to the extent of maintaining efficient regulation of interstate commerce under the paramount power of Congress. It does not involve general regulation of intrastate commerce. Action of the Interstate Commerce Commission in this regard should be directed to substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce, and must leave appropriate discretion to the state authorities to deal with intrastate rates as between themselves on the general level which the Interstate Commerce Commission has found to be fair to interstate commerce * * *. So, too, in practice, when the state commission shall recognize their obligation to maintain a proportionate and equitable share of the income of the carriers from intrastate rates, conference between the Interstate Commerce Commission and the state commissions may dispense with the necessity for any rigid federal order as to the intrastate rates, and leave to the state commissions power to deal with them and increase them or reduce them in their discretion."

With respect to the baggage tariff involved in this case, petitioner offered to show that the Public Service Commission of Missouri had attempted to follow the suggestion contained in the last portion of the excerpt just quoted by continuing in effect, after termination of the period of federal control, its baggage tariff.

To the same effect is the holding of this Court in

Illinois Central Railroad Co. v. Public Utilities Commission, 245 U. S. 493.

In that case this Court summarized its prior holding in the Shreveport case and reannounced certain rules, among which are the following:

> "1. Under the commerce clause of the Constitution Congress has ample power to prevent the common instrumentalities of interstate and intrastate commerce, such as the railroads, from being used in their intrastate operations in such manner as to affect injuriously traffic which is interstate.
>
> "2. Where unjust discrimination against interstate commerce arises out of the relation of intrastate to interstate rates this power may be exerted to remove the discrimination, and this whether the intrastate rates are maintained under a local statute or by the voluntary act of the carrier.
>
> "3. In correcting such discrimination Congress is not restricted to an adjustment or reduction of the interstate rates, but may prescribe a reasonable standard to which they shall conform and require the carrier to adjust the intrastate rates in such way as to remove the discrimination; for where the interstate and intrastate transactions of carriers are so related that the effective regulation of one involves control of the other it is Congress, and not the state, that is entitled to prescribe the dominant rule."

In the case of

State of New York et al. v. United States et al.,

decided by this Court on February 7th, 1922, the State of New York and its Attorney-General filed a bill against the United States and the Interstate Commerce Commission to annul and enjoin the enforcement of an order of the Interstate Commerce Commission requiring the interstate railroads operating in intrastate commerce in the State of New York to charge in such commerce certain baggage and passenger rates, all for the purpose of bringing the intrastate rates to the level of the interstate rates previously fixed by the Commission. This Court affirmed the decree of the lower court, dismissing the appeal, saying:

> "The evidence in this case shows that if the passenger and other rates here in controversy were to continue in force, as ruled by the Public Service Commission of New York, the annual gross revenues of the interstate railroads operating in the State of New York, from both interstate and intrastate passenger and milk business would be less by nearly twelve million dollars than those revenues if the intrastate fares and rates were on the same level as the interstate rates, as fixed by the Interstate Commerce Commission. If the lower level of intrastate fares and rates is to be maintained, it will discriminate against interstate commerce in that it will require higher fares and rates in the interstate commerce of the state to secure the income for which the Interstate Commerce Commission must attempt to provide by fixing the rates under Section 15A of the Interstate Commerce Act as

amended by Section 422 of the Transportation Act of 1920, 41 Stat. 456, 488, in carrying out the declared congressional purpose 'to provide the people of the United States with adequate transportation.' As we have just held in the Wisconsin case this constitutes 'undue, unreasonable and unjust discrimination against interstate commerce,' which is declared to be unlawful and prohibited by Section 13, paragraph 4 of the Interstate Commerce Act as amended by Section 416 of the Transportation Act of 1920, 41 Stat. 456, 484, and which the Interstate Commerce Commission is authorized thereunder to remove by fixing intrastate rates for the purpose. We need not repeat our reasons for our ruling."

We submit that the judgment of the St. Louis Court of Appeals is in conflict with and repugnant to the holding of this Court in the cases just referred to. If the judgment complained of is a proper one, the result is that if one passenger checks his baggage from one point in Missouri to another point in Missouri, and it is delivered to another person by the carrier, he may recover the full value upon the theory of a conversion, whereas if he checks it from a point in Missouri to a point in Illinois on the east, or in Kansas on the west, or to any other state, and it is delivered to a third person, he can recover only the sum of one hundred dollars ($100.00). In the latter event the theory of conversion, under the express holding of this Court in the Levee case, cannot be relied upon to escape the effect of the tariff provision, whereas, in the first case, under the decision of the lower court, the theory of conversion operates to impose upon the carrier liability

for full value of the property lost, even though it received no consideration for the increased liability.

For the reasons herein discussed, we respectfully submit that the judgment complained of should be reversed.

EDWARD J. WHITE,
JAMES F. GREEN,
MERRITT U. HAYDEN,
Attorneys for Petitioner.

APPENDIX.

The Interstate Commerce Act.

The Interstate Commerce Act (24 Stat. L. 379, 34 Stat. L. 584) provides in part as follows:

"Sec. 6. (1) That every common carrier subject to the provisions of this act shall file with the Commission created by this act, and print, and keep open to public inspection, schedules showing all the rates, fares and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water, when a through route and joint rate have been established. • • •

(7) No carrier, unless otherwise provided by this act, shall engage or participate in the transportation of passengers or property as defined in this act, unless the rates, fares and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this act; nor shall any carrier charge, or demand, or collect, or receive, a greater, or less, or different compensation for such transportation of passengers or property, **or for any service in connection therewith** between the points named in such tariffs, than the rates, fares and charges which are specified in the tariff filed and in effect at the time; nor shall any common carrier refund, or remit in any manner, or by any device, any portion of the rates, fares and charges so specified, nor extend to any shipper, or person, any privileges or facilities in the transportation of passengers or property except such as are specified in such tariffs."

The Federal Control Act.

The Act of Congress known as the Federal Control Act (40 Stat. L. 451) provided in part as follows:

> "That during the period of federal control, whenever in his opinion the public interest requires, the President may initiate rates, fares, charges, classifications, regulations and practices, by filing same with the Interstate Commerce Commission, which said rates, fares, charges, classifications, regulations and practices shall not be suspended by the Commission pending final determination."

Transportation Act 1920.

The Act of Congress (41 Stat. L. 464) known as Transportation Act 1920 provided in part as follows:

> Sec. 208. (a) All rates, fares and charges, and all classifications, regulations and practices, in any wise changing, affecting or determining any part of the aggregate of rates, fares or charges, or the value of the services rendered, which, on February 29, 1920, are in effect on the lines of carriers subject to the Interstate Commerce Act, shall continue in force and effect until thereafter changed by state or federal authority, respectively, or pursuant to authority of law; but prior to September 1, 1920, no such rate, fare or charge shall be reduced and no such classification, regulation or practice shall be changed in such manner as to reduce any such rate, fare or charge, unless such reduction or change is approved by the Commission."